

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JUSTIN T. MAHER,

Plaintiff,

-against-

CAITLIN H. RAILO and
QUALITY BUS SERVICE, LLC,

Defendants.

ATTORNEY DECLARATION
IN RESPONSE TO RAILO'S
SUMMARY JUDGMENT
MOTION

Case No: 14 CV 3586 (VLB)

ADAM T. MANDELL, hereby declares under penalty of perjury that the following is true and correct in accordance with 28 U.S.C. § 1746:

1. I am an attorney at law duly admitted to practice in the United States District Court for the Southern District of New York, and I am a partner of the law firm of Maynard, O'Connor, Smith & Catalinotto, LLP, attorneys of record for the defendant QUALITY BUS SERVICE, LLC (hereinafter as "Quality"), and as such attorney, I am fully familiar with the facts, pleadings and proceedings heretofore had herein.

2. I submit this Attorney Declaration in response to the Motion for Summary Judgment filed on the behalf of the codefendant CAITLIN H. RAILO (hereinafter as "Railo") (Doc. 71).

3. Quality takes no position with respect to Railo's Motion for Summary Judgment. This Attorney Declaration in Response is offered to correct and/or clarify some of the factual statements made in Railo's Motion, to the extent that they may impact the Court's determination on Quality's Motion for Summary Judgment (Doc. 75).

4. In support of her Motion, Railo asserts that a background check performed by

the State of New York revealed a prior DWI charge from 2003. In support of that assertion, Railo refers to the driving record abstract obtained by Quality from the New York State Department of Motor Vehicles (“DMV”); and, the DMV’s Final Qualification Notice dated November 2, 2012 sent to Quality, certifying that Railo passed the criminal history background check conducted by the NYS Division of Criminal Justice and the Federal Bureau of Investigation (Martucci Affid., Exhibits B and D; LaRose Affirm., Exhibit P).

5. Contrary to that assertion, Railo’s driving record abstract obtained from the DMV did not reveal to Quality her prior DWI charge from 2003 (Martucci Affid., ¶ 8, Exhibit B; LaRose Affirm., Exhibit P). There is absolutely no indication on Railo’s driving record abstract of a prior DWI charge from 2003.

6. Nor does the DMV’s Final Qualification Notice dated November 2, 2012, received by Quality, make any reference to a prior DWI charge from 2003 (Martucci Affid., ¶ 13, Exhibit D; LaRose Affirm., Exhibit P).

7. Although Railo’s driving record abstract and Final Qualification Notice demonstrate that she was qualified by the State of New York to operate a school bus, those documents did not reveal to Quality any information regarding a prior DWI charge from 2003.

8. Assuming *arguendo* that Quality failed to investigate Railo’s prior driving history which may have revealed a prior DWI charge in 2003, which Quality denies, that is not a basis for an award of punitive damages. *Watson v. Strack*, 5 AD3d 1067 (4th Dept. 2004)(allegation that employer failed to investigate driving history of commercial driver did not state a viable claim for punitive damages).

9. Similarly, even if Quality knew of Railo's prior DWI charge, which it denies, that too would not support an award of punitive damages. *Evans v. Stranger*, 307 AD2d 439 (3d Dept. 2003) (plaintiff's claim that employer knew that the driver had a recent conviction for driving while intoxicated when it hired him as a bus driver, permitted him to take a leave of absence rather than terminate him after his repeated drug use, and reinstated him as a bus driver without continued monitoring, did not state a viable claim for punitive damages).

WHEREFORE, the defendant QUALITY BUS SERVICE, LLC respectfully requests an Order dismissing the plaintiff JUSTIN T. MAHER's punitive damages claims, as well as his claims for Negligence & Corporate Liability (Count III) and Negligent Entrustment (Count IV), together with such other and further relief as to this Court seems just and proper.

Dated: October 14, 2015

MAYNARD, O'CONNOR, SMITH
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